Supreme Court, U.S.
FILED

021400 JAN 27 2003

OFFICE OF THE CLERK

(1)

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

GEORGE MANNING---PETITIONER

Vs.

NEW YORK UNIVERSITY--RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
SECOND DISTRICT

PETITION FOR WRIT OF CERTIORARI

GEORGE MANNING
8153 SE CUMBERLAND CIRCLE
HOBE SOUND, FLORIDA 334555
(772) 545 0824

36 pp

QUESTION(S) PRESENTED

Is the District Court empowered to expand an in-court agreement, adding terms not agreed to by parties?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Defendant's Attorney is:
Anderson, Kill & Glick
1251 Avenue of Americas
NewYork,N.Y. 10020-1182

Defendant's address is:
New York University
70 Washington Square
New York, N.Y. 10012

Plaintiff:

George Manning, Pro Se

TABLE OF CONTENTS
PETITION

Jurisdiction	1
Statutory Provisions Involved	2
Statement Of The Case	3
Reasons For Granting The Writ Summary	5
Conflicting Rulings	6
Plaintiff never agreed to a general release	8
Appeals Court avoids issue	8
Irrelevant and untrue matter considered	13
District Court's version given precedence	14
a-District court's statements doubtful	15
b-District Court not neutral	19
Conclusions	24

INDEX OF APPENDIX

APPENDIX A - United States Court of Appeals for
page 1 Second Circuit
Manning v New York University
Plaintiff's Fed. R. Civ P. 60(b) Appeal
Denied- Docket- 01-9073
Circuit Judges-Calabresi, Sack and B.D. and
Parker Jr Filed July 26, 2002

APPENDIX B - U.S. 2nd Circuit Judges Circuit, Guido
page 2 Calabresi, Robert D. Sack and Barrington
Parker denied Plaintiff's Petition for
Re-hearing # 01-9072 Filed Oct 29,2002

APPENDIX C - US Court of Appeals for 2nd Circuit's
page 3 Notification, July 30, 2002, and Per
Curiam Affirming District Court's
Ruling #01-9073

APPENDIX D US District Court, Southern District for
page 21 New York, Judge Buchwald Denying
Motion Index# 98 Civ 330 (NRB) Undated

APPENDIX E US District Court, Southern District for
page 22 New York, Judge Buchwald, Memorandum
and Order, 98 Civ 330, August 21, 2001

APPENDIX F US Southern District for New York Court
page 23 Order of Dismissal for 98 Civ 330 (NRB)
Judge Buchwald, January 30, 2001

APPENDIX G US southern District for New York Court
page 24 Correcting Order, 98 Civ 330 (NRB)
Judge Buchwald, March 12, 2001

LODGINGS

LODGING A Southern District for NY Transcript for
page 1 January 30, 2001, 98 Civ 330

LODGING B Defendant's Hand-written Summary of
page 6 In-court Settlement, January 30, 2001

LODGING C Defendant's Proposed Written Agreement
page 9 February 20, 2001

LODGING D Plaintiff's Objections Faxed to Defendant
page 15 March 15, 2001

LODGING E Plaintiff's Counsel 60 (b) Motion to District
page 17 Court

LODGING F Defendant's Opposition to 60 (b) Motion
page 21 Dona Kahn, June 11, 2001

LODGING G Declaration of Meredith Lichtenberg
page 35 June 11, 2001

LODGING H Plaintiff's Appeal to Appeals Court
page 48

LODGING I Lorraine Manning's Affidavit
page 78

LODGING J Defendant's Appellee Brief
page 87

LODGING L Plaintiff's Partial Withdrawal of Appeal
page 103

LODGING M Plaintiff's Petition for Re-Hearing
page 108

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issue to review the judgment below.

JURISDICTION

The date on which the United States Court of Appeals decided my case was July 26, 2002 (App A)

A timely petition for rehearing was denied by the United States Court of Appeals on the following date October 29, 2002 and a copy of the order denying rehearing appears at Appendix B.'

STATUTORY PROVISION INVOLVED

Rule 10. Considerations Governing Review on Certiorari
a-Court of Appeals decision conflicts with another court of appeals on the same important matter.

The Second Circuit Court of Appeals rendered a decision that affirmed District Court's ruling that allowed additional terms to be added to an in-court agreement. The ruling conflicts with three previous rulings by district and circuit courts.

The below citations were taken verbatim from the Appeals Court's per curiam, pages 16 and 17. (App C)

1-Tanus Films, 801 F. 2d at 582, a settlement judgment allows the district court to retain authority to implement **but not expand** (bold print added) upon the parties settlement.

2-Huertas, 813 F 2d at 582 (holding that a district court **could not sua sponte add a new term** allocating attorneys' fees in an existing settlement judgment).

3-Air Crash Disaster at Tohn F. Kennedy Inn Airport on Tune 24, 1975, 687 f. 2D 626, 629 (2D Cir. 1982) ("It is beyond a district court's discretion **to alter the terms of** (bold print not in original) or to refuse to enforce **a settlement** agreement, absent special circumstances, such as a material breach of the agreement."}

STATEMENT OF THE CASE

Background: On January 30, 2001, the above parties agreed to settle a case involving charges of an age discrimination and retaliation for opposition to racial discrimination.

Defendant sent a written agreement to Plaintiff (Lodging C). It contained additional terms not agreed to in court. Plaintiff planned to sue Defendant in New York State Court for a claim other than those satisfied in federal court. The additional terms barred such legal action.

Whereupon, Plaintiff sought to exercise the option to reject the judgment contained in Dismissal Order of January 30, 2001, US 2d 98civ 3300, (App F) but the District Court declared the order a mistake and issued a correcting order without a "bust option" (see App G).

On Apri14, 2001, District Court held a conference with NYU's counsel and Plaintiff's previously-discharged trial counsel, at which the Court ruled to deny Plaintiff's request to have the additional terms removed and ordered him to sign the Defendant's version of the agreement. See District Court's Memorandum and Order, pg 44, Aug. 21, 2001, 98 civ 3300 (App M). Plaintiff was not present nor represented at the conference.

Plaintiff then appealed under F. Rc.P. 60(b) to have the judgment set aside citing violation to OWBP A (Older Worker Benefit Protection Act) provision of ADEA, 29 U.S.C. 621 and a faulty (altered) agreement. District Court denied Plaintiff's motion. Plaintiff then appealed to the Court of Appeals.

Plaintiff's lawyer withdrew after conferring with counsel from Appellate Court When Plaintiff's lawyer withdrew, Plaintiff continued pro se, but narrowed his appeal to only seeking the additional terms be removed while allowing the agreement, minus the two added terms, to stand. (Lodg L)

Plaintiff signed the agreement, but as of January 17,

2003, it has not been fully executed, the Appellate **affirmed District** court's **order** that Plaintiff must sign the agreement*. Affirmed by Appellate, July 9, 2002 (App A).

*Plaintiff signed the agreement because being disobedient to a court order was stressful and repugnant to him after years of service as an law enforcement officer

I pray the signing of the agreement will not effect this petition.

Fed R. Civ P. 60(b) allows an appeal within a year and makes no stipulation that the agreement cannot be executed. Thus, it should follow that fully executed agreement can be appealed

REASONS SIGNING SHOULD NOT AFFECT PETITION

Plaintiff is only objecting to the additions. Whatever the ruling on this petition, Plaintiff would sign the agreement; thus, there is no reason to delay execution and deny the parties the fruits of settlement.

Plaintiff will respect Defendant's desire for confidentiality. He will limit arguments to post trial acts and statements of Defendants and courts, except he will respond to statements made by the District Court in its Memorandum and Order of August 21, 2001 where the court refers to prior events.

Plaintiff was ordered by the District Court in its August 21, 2001 order to sign; thus, he had no choice.

REASONS FOR GRANTING THE WRIT

I--Ruling of the Court of Appeals conflicts with prior rulings of courts of last resort 6

II--Plaintiff never agreed to a "general release". 8

III-Appeals Court1s per curiam does not address the appeal 8

IV-Irrelevant and untrue matter considered 13

V -Appellate should not have given precedence to Court's testimony in its Aug 21, 2001 Order because: 14

a-cited statements of District Court are doubtful because several do not make sense 15

b-acts and statements of the District Court provides evidence that the court was not neutral in this case 19

Conclusions 24

I--CONFLICTING RULINGS

January 30, 2001, court transcript of settlement (Log A)

First, Crystal Hicks, the plaintiff's stepdaughter, finish her bachelor degree from NYU without paying for tuition. Second, George Manning will be considered on the record as a retiree from NYU. Third, the plaintiff George Manning will not publish anything pertaining to this lawsuit or the underlying events of his separation from employment from NYD. Fourth, the terms of this agreement shall be confidential. Fifth, NYU will pay to George Manning the sum of $199,000 in separate checks. Counsel for the plaintiff will advise counsel for NYU as to the denomination of the two separate checks.

Additions to Agreement Proffered by Defendant
(Full Proposed Agreement in Lodging C)

3. ...Plaintiff shall not seek employment with defendant
4. All claims which Plaintiff...could have asserted... shall be dismissed with prejudice
5. ...hereby releases Defendant (etc) from all claims... whether federal, state or local...
6. Plaintiff expressly waives all claims or right to any other type of relief...
7.Plaintiff will not at any time.. .institute any litigation.. .any matter concerning Plaintiff's former employment with Defendant

The above terms were not agreed to in court or elsewhere.

The following three cases were taken verbatim from the per curiam, pgs 16 & 17, (App C *18,19). They specifically state that District Court shall not expand an agreement.

I--Janus Films, 801 F. 2d at 582, a settlement judgment allows the district court to retain authority to implement **but not expand** (bold print added) upon the parties settlement.

2--Huertas, 813 F 2d at 582 (holding that a district court **could not sua sponte add a new term** allocating attorneys' fees in an existing settlement judgment).

3--Air Crash Disaster at John F. Kennedy In'l Airport on June 24, 1975, 687 F. 2d 626, 629 (2D Cir. 1982) ("It is beyond a district court's discretion to **alter the terms of** (bold print not in original) or to refuse enforce **a settlement agreement**, absent special circumstances, such as a material breach of the agreement."}

Since the above citations do not apply and since no other applicable citation was cited, it must be assumed that the Circuit Court is writing new law and usurping the legislature.

By allowing the District Court's ruling to stand, the Circuit Court is saying the lower court can expand an agreement. This ruling greatly increases the District Court's power, which could have grave consequences for the country.

Without his agreement, Plaintiff's fundamental right to pursue legal action in the state court was nullified.

II-PLAINTIFF NEVER AGREED TO A GENERAL RELEASE

Nowhere does either Defendant , District Court or Circuit Court cite that Plaintiff agreed to a general release.

District Court made several untrue statements that Defendant wanted a general release (see below at V a Untrue Statements of the Court) and then stated, "... and there is no doubt that this is what Mr Manning agreed to." Pg 10, Court Memorandum and Order, Aug 21, 2001, 98 civ 3300.

"No doubt" in the context used is speculative and baseless.

The Appeals Court ignored the lack of agreement by Plaintiff and appears to be saying his agreement was not necessary for a general release. However, this is belied by District Court's order of Aug 21, 2001, cited above, pg 3, (App E) "he initially stated that the size of the lump sum payment would depend on whether the release was a general release or simply a release of the claims in the suit." (Had Plaintiff made such a statement, then it is hard to imagine Defendant not putting in the court agreement that Plaintiff was agreeing to a general release.)

In any case, the Court is acknowledging that Plaintiff's agreement to a general release is required. Albeit, Plaintiff never made such a statement.

III-PER CURIAM OF APPEALS COURT SKIRTS THE ISSUE OF ADDITIONAL TERMS BEING ADDED

(All citations are from per curiam unless otherwise noted)

The issue before the Appeals Court was can additional terms that the Plaintiff did not agree to be added to an agreement? The Appeals Court's per curiam never directly confronts or answers this question. Very little of the document is about the additions, which is the extent and

crux of Plaintiff's modified appeal (Log L).

The Appeals Court tries not to set a precedent that so dramatically increases the district court's power (that it can expand an agreement) thus, the decision is obscured by irrelevant matter and not clearly stated.

-a-pg 13, the Court states "First, he asserts that he should not be barred by the agreement from "at any time in the future institut(ing) any litigation against (NYU) concerning any matter arising prior to the date of this Agreement, including, but not limited to, any matter concerning Plaintiff's former employment with Defendant or his separation therefrom." It is not clear to whom the Court is attributing this quote. The wording is from the agreement. The Plaintiff did not make such a statement nor does he make such an argument.

b- The Appeals Court's findings on page 13 p.c. are based on statements alleged to have been made on September 21, 2000 (before the agreement) and Aprl14, 2001(after the agreement) The Appeals Court is quoting the District Court that, "the basic terms of the settlement were discussed in great detail at the September 21, 2000 settlement conference." "Therefore, even prior to the January 30, 2001 settlement conference, Manning knew <u>all</u> of the key settlement terms, save the dollar figure."

The basic terms were discussed, but general release was not one of the terms. Even if a general release was discussed why would this be relevant if Plaintiff did not agree to it?

Page 14, pc. "Even though, during the April 4, 2001 conference call, the district court chose to make clear that "Manning's retiree status implied that he would not reapply for his job." This is an implication.

Since the court is relying upon an implication to

justify the inclusion of this added term rather than citing an act or statement, then this matter must never have been discussed at all, never mind in great detail as the court states all basic terms were.

And how does an implication become a fact and would not become cannot and re-applying for the same job become any job?

The Court is citing things that are alleged to have occurred before the agreement and a statement that occurred after the agreement. Plaintiff will, below, argue the irrelevancy of statements made September 21, 2000, before the agreement. But, the irrelevancy to what was agreed to on January 30, 2001 of statements made weeks later on April 4, 2001, requires no discussion.

Continuing on page 14, "nothing in the record suggests that Manning in fact had been previously unaware of the implications of this status." Is the Appeals Court saying that Plaintiff must show he was previously unaware that being designated as retired carries with it the artificial implications the court conjured up? How do you prove you are unaware of something.? And if he could prove he was unaware, would it make any difference?

-c-Page 15, p.c., "Nothing in either Manning's or his wife affidavit tends to establish that" any of the April 4, 2001 draft settlement's terms were novel or had not been discussed either on or before the January 30, 2001 negotiations." This is confusing. Plaintiff has sworn in his appeal affidavit that neither a general release nor either of the prohibitions were ever discussed before or during January 30, 2001 negotiations. Plaintiff wonders how he can establish something that did not happen (it is difficult to prove a negative)?

Plaintiff's wife only became involved when the district court ordered her into chambers. She was not present at any pre-trial discussions.

d- page 7, footnote, "Manning suggested that he had discharged Kousoulas when the court treated her as representing him in the April 4, 2001 conference call. Since he has given up any arguments that would stem from the lack of representation in the Apri14 conference call, we need not, and therefore do not, express any opinion on that question." How did the court arrive at the conclusion that Plaintiff had given up any arguments stemming from lack of representation? Nevertheless, whether Plaintiff was represented or not, the court's ruling conflicts with three federal court decisions previously rendered and that is the issue.

The April 4 conference was where the District Court decided that NYU's version of the agreement was to stand. Should not Plaintiff have been present or represented when the Court was deciding what Plaintiff now is appealing? The court only heard arguments from one side. Since Plaintiff was not present, how can he know what arguments he might have made?--that the Court states he has given up

> (At the oral hearing, one of the justices questioned NYU's attorney in this fashion: asking whether the court did not suspect something was wrong since Manning had hired another attorney, Gerard McCabe, who represented him on March 8, 2001 and that he appealed *pro se* on April 2.
>
> > (See US 2OOt 98civ3300 order, Aug 21, 2001, pg 9. "On April 2, 2001, Mr Manning called chambers and declared that he wished to make a Fed R. Civ. P. 60(b) motion." "When the court asked Ms Kousoulas about the proposed Rule 60(b) motion, we learned hat Mr Manning had never consulted with her about it.")

NYU's attorney responded that the attorney of record had not been changed. The Justice asked, querulously, if it was the client's responsibility to know

about the need for such a change?

Plaintiff requested the tape, but was told recorder had not operated that day.

Without the tape. the justices were unable to review what was said at the hearing which could have justified a re-hearing.

-e-On page 17, p.c. seeking to justify the altering of the agreement, the Appellate stated, "the district court had ample authority to clarify ambiguities in the description of the settlement reached on January 30th," What ambiguities? The record is very clear. Even Ms Kahn, defendant's attorney, agreed that the record was clear and complete in Memorandum to Court, USDC, 2nd d, June, 11, 2001, pg 11, (Log F) "settlement entered on the record embodied all the terms negotiated on January 30th, down to the smallest detail." Id pg 6, "the terms were clear, as they were read into the record." Id pg 7, "the terms memorialized on the record which has the same of indicia of reliability as a written record."

There was no confusion regarding the agreement and no need for the District Court to clarify anything.

f- The Appeals Court misstates the appeal stating that Plaintiff claims he did not understand, "Further, Manning insistence that he did not understand that the settlement required him to give NYU a general release." See per curiam pg 14 at 6. Plaintiff has never claimed that he did not understand the settlement. And the court does not state why the settlement required him to give NYU a general release.

The court seems to be saying that a settlement infers a general release from all litigation as if such was natural upshot. But, Plaintiff contends that it is the least natural interpretation. It is natural for the Defendant to be released from the causes of actions before the court. It is not natural for Defendant to be released from causes of action that

could be proposed in other courts unless it was so agreed to by parties.

By prohibiting legal action in state court, the court is assuming authority beyond its jurisdiction.

It may be common for lawyers to write all encompassing prohibitions to protect their clients, but being a common practice does not make it right.

IV- IRRELEVANT AND UNTRUE MATTER CONSIDERED

-a- There is much that is untrue and irrelevant in the circuit court's per curiam. First and foremost, it is not true that NYU ever made any statement demanding a "general release" . -- Second, even supposing NYU did make such a demand in September 2000, why would that allow the court to include a general release in the January 2001 agreement? Not only had considerable time passed since September 2000, but there had been a trial, started and aborted, in between. Discussions do not automatically become part of a final agreement.

It should be noted that nowhere is the court saying that Plaintiff agreed to what NYU supposedly stated. In fact, it does not make sense that Plaintiff would agree to this since what Plaintiff is getting in return had not yet been decided in September 2000, Third, if Defendant wanted a general release as badly as it now claims, it would have put it into the agreement in court. And Fourth, pg 4, per curiam, "... the district court urged **fresh** (bold added) negotiations." in court on January 30, 2001 could be added. Fresh means back to square one. Discussions in 2000 are **not fresh** and **not relevant** to **fresh** negotiations in 2001.

-b-Defendant made hand-written notes of settlement. Pg 6, per curiam, "...defense counsel wrote-out a summary of the terms on sheet paper which Mr Manning reviewed, assisted by his two lawyers. Finally, in open court, on the record, and with the presence of counsel, Mr Manning affirmed these settlement terms again."

(The Defense had two chances (in its notes and in the record) to record what it later added, but it did not.)

It can be seen that Defendant was not only being very careful entering all the terms, but also was careful making sure all parties agreed that all the terms were being entered. Defendant required both Plaintiff and his lawyers, to acknowledge that all the terms were being entered. The additional prohibitions were not among the terms being entered.

Weeks later the prohibitions were added..

If a party is allowed to later insert terms, then future litigants could purposely omit terms, thereby, avoiding paying for them. Plaintiff would not have agreed to settle with the added terms because he planned further litigation in NY State Court..

c-Often during negotiations, things that were agreed to earlier get taken off the table. Prior agreements need to be incorporated into the final agreement to have validity.

d- The fact that all courts have stenographers testifies to the priority of written records over oral discussions.

e-Let us make a theoretical case. Let us suppose a general release was discussed and Defendant was including it when putting the terms into the record., but Plaintiff objected and it was taken out and the agreement written without it, as was the case January 30, 2001. How relevant then would prior discussions be? This did not happen because a general release was never mentioned.

V --COURT OF APPEALS ONLY ACCEPTED FACTS FROM DISTRICT COURT

Accepting the district court's version of facts is normally proper under the assumption that court is neutral, but in the instant case, the court had not acted in a neutral manner and some of the court's untruthful statements are

not consistent with facts reported elsewhere and some do not make sense.

Va--**UNTRUE STATEMENTS IN DISTRICT COURT'S MEMORANDUM & ORDER, AUGUST 21, 2001, 98 CN 3300**

1-page 18, "In the hours *of* negotiations before the court *on* September 21, 2000 and January 30, 2001, NYU insisted that there could be no settlement without a complete release of all claims... " "This position was expressed directly to Mr Manning by NYU's counsel in open court..." If expressed in open court, there should be a record. There is no record of such a statement

-2-On pg 3, "he initially stated that the size of the lump sum payment would depend on whether the release was a general release or simply a release of the claims in the suit" On pg 24, referring to the same September conference, "The only term in true dispute was the dollar figure. . ."

Why would Plaintiff agree to anything without the dollar figure being settled? According to the court, pg 3, parties were at least a $100,000 apart There was no agreement in 2000, and common sense allows for none, but, the court is trying to imply that there was some agreement. There were not even such discussions.

3-On page 17, referring to September 21, 2000 conference" At that conference, the key issues discussed were (1) tuition relief for Mr Manning's stepdaughter, (2) the legal status of Mr Manning's termination, i.e. could he be considered a retiree?, (3) the confidentiality of settlement, and (4) money compensation." There is no mention of any complete release here. The court's testimony varies depending upon what point it wants to make.

4-on page 18, the court states, "Furthermore, when

the Court communicate defendant's final settlement order, the one Mr Manning accepted, it stated explicitly that the offer was for a general release of all claims against NYU that arose prior to date of settlement."

From Defendant's testimony (stated below) we see that the time between the final offer and the recording of the settlement was less than five minutes; thus, how could defendant in so short a period omit putting into the record something that, now, it claims it wanted so badly?

The agreement was entered into the record at **11:45 a.m.** January 30, 2001. See transcript of that date (Log A). NYU's attorney, Meredith Lichtenberg, testified, "The court went off the record shortly before **10:00 a.m.**" "Over the next **two hours**, the court met privately with the Manning party for an extended period of time." See Declaration of Law 98 civ3300, June 11, 2001, pg 3 (Log G).

Since the agreement carne at the end of negotiations, we can see how little time expired before the agreement was entered into the record. And since Ms Meredith was making a point about time, we can expect that she was very careful recording the time negotiations started and how long they lasted.

It is not true that the Court stated that the final offer was for a general release.

5- page 5, "Similarly, towards the end of settlement talks, Mr Manning persuaded his attorneys to accept a reduction in their fees in order to boost his personal recovery."

Plaintiff's lawyers did reduce their fees, but not because Plaintiff asked them. They were responding to

what the court wanted. Plaintiff's lawyers both feared* and idolized the judge and were putty in the judge's hands. The court was very insistent that NYU's offer should be accepted. Plaintiff's attorney, Bonnie Nussbaum, in chambers, said that a large award could result after a trial. The court chided her saying she was not being helpful. After that, both Plaintiff's lawyers argues, with the court, that Plaintiff should accept NYU's offer.

> On March 8, 2001, when Plaintiff's attorney, Gerald McCabe, stated that Plaintiff was coerced. The judge reportedly responded that it is ridiculous to think a big police captain can be coerced by three little women. In admitting the ganging up of the three women, the judge does not seem to have a problem with the fact that two of the women that she was dominating were Plaintiff's lawyers

Plaintiff was surprised when his lawyers offered to lower their fees. He had not asked them to do it

From page 25 (App E) Court's Memorandum and Order of Aug 21, 2001, 2 d, 98 civ 3300, it can be seen that the Court was pressuring Plaintiff and that the court wanted the agreement (this fact was influencing Plaintiff's lawyers) "In over twenty years on the bench, we have seen few plaintiffs this strong-willed and forceful." The court could not have made such an assessment, if it, and the lawyers, had not put extreme pressure on Plaintiff to settle and he had not strongly resisted.

*fear caused by pre-trial acts and the excluding of relevant evidence. If the court requires, evidence of pre-trial non-neutral acts could be provided.
Here, Plaintiff is limiting his arguments to post trial acts.

5-pg & 6, "Pursuant to this agreement, he even negotiated to have separate checks cut to himself and his lawyers, apparently for tax reasons."

Plaintiff did not need separate checks since he had receipts to show any money paid his attorneys would be a refund of already taxed money. It was Plaintiff's attorneys who wanted (and the court knew it) separate checks because, to please the judge, they had abandoned their client during negotiations and they were worried that they might have some difficulty getting their fees.

The District Court transcript of January 30, 2001, (Log A) makes it clear who would benefit from the two checks arrangement, Lichtenberg speaking, "...Fifth, NYU will pay to George Manning the sum of $199,000 in separate checks. Counsel for Plaintiff will advise counsel for NYU as to the denomination of the two separate checks." The Court. "I guess it should be clear that one check will be payable to counsel and the other directly to Mr Manning."

Thus, Plaintiff's counsel will decide the denomination of the check they will receive. And the court. by speaking to the record was assuring that they received whatever amount they specified.

Does this sound like an arrangement Plaintiff wanted? Of course not, Plaintiff would have rather he received total payment (one check) and then he paid the lawyers.

6- page 5, "After much back-and-forth with NYU, he succeeded in narrowing the scope of the confidentiality clause so that it would only cover matters related to his termination from NYU and lawsuit, and not his professional experience."

Any confidentiality clause broader that events leading to the termination and the lawsuit is inconceivable. The court claims Plaintiff was able to eliminated his

professional experience from the clause. What possible claim could NYU have on Plaintiff's professional experience not connected with the termination process? In fact, NYU never asked for confidentiality beyond what is in the agreement. If plaintiff was not allowed to mention working at NYU at all, then a 16 year gap in his resume would have been created. And the provision in the agreement changing his status from terminated to retired so he can seek employment would have little value. Seeking employment with a 16 year gap in ones resume would be a fruitless effort.

The above statements are not credible and the Appeals Court should not have only accepted the court's version of facts-- as it is indicated it did in the per curiam..

Vb ACTIONS OF DISTRICT COURT BELIEVED TO INDICATE IT WAS NOT NEUTRAL

1- An indication that the court was not neutral became evident when the court rescinded its dismissal order that contained a "bust clause" after Plaintiff sought to use the option. The court said it was a mistake and issued a new correcting order without the thirty days rejection clause.

Because this case falls under the OWBPA's protective provision of ADEA, see 626 (£)(1) whereby the law requires that a senior be given reasonable time to consider decisions, a thirty days "bust clause" is most appropriate.

Plaintiff believes that, since his attorneys were acting in concert with the court forging the agreement, the judge believed they would not show the "bust clause" order to him and the agreement would be made more binding after thirty days by its inclusion.

In other words, the original order was not a mistake. It only became a mistake when Plaintiff tried to

use the option. If a "bust order" was unusual, the aide posting it would most likely check with the judge before posting it.

2-In chambers, the court argued that Plaintiff should accept Defendant's offer. Plaintiff kept insisting that he wanted to go to trial because in open court his lawyer had announced a negotiating position that was well below what Plaintiff was seeking. Then, Defendant lowered its offer (from what it was previously offering) thereby lowering of the middle ground. Plaintiff's resistance (see above, pg 20, where the court states he was so strong-willed) was frustrating the Court so it ordered Plaintiff's lawyer to get his wife and bring her into chambers. When this was done, the court then said, in front of Plaintiff's wife, that he was just being stubborn and would lose everything and have to pay NYUs court costs. Plaintiff's wife had overheard that NYU had already spent $100,000 on legal fees. Plaintiff, seeing a pained expression on his wife's face, told her to leave the room. Later, Plaintiff's wife was still upset and asked Plaintiff to settle and he did (Lorraine Manning's affidavit, (Log I).

The court's warning, in light of the fact, that Plaintiff had presented a prima facie case in overcoming summary judgment and, since, therefore, paying Defendant's court costs was not a possibility, was designed to scare Plaintiff's wife.

Plaintiff was too stunned by the fast changing events (mistrial, delayed trial, unprepared for negotiations, his lawyer exposing his bargaining position and his wife being brought into the case) to question what was occurring. When Plaintiff needed help, his lawyers did not provide it, instead they lowered their fees.

In US 2d, 98civ3300, Aug 21,2001, pg 27* 10, "Throughout the entire time Mrs Manning was in the robbing room, she appeared relaxed and comfortable." The district court is acknowledging that Plaintiff's wife was in chambers. Why was she there? She could not help Plaintiff since she knew few details of the case. It was stressful. There was no reason for her to be stressed also.

Id, pg 25* 6, the court referring to Plaintiff states, "Throughout all of the negotiations, we observed that he was assertive, confident, and steadfast in his positions. In over twenty years on the bench, we have seen few plaintiffs this strong-willed and forceful."

But, the strong-willed and forceful Plaintiff did accept Defendant's offer. Since he wanted to go to trial, why? His wife being scared by the court is why.

-3-District Court ruled at a April 4, 2001 conference, without Plaintiff being represented, in favor of NYU by rejecting Plaintiff's claim that additional terms were inserted in agreement (discussed above at III subd d) Despite knowing Ms Kousoulas no longer represented Plaintiff, the court wrote in US 2 d 98civ3300, Aug 21, 2001,pg 44, "we order Mr Manning to sign the version of the settlement agreed upon by counsel and the court..."

4- Plaintiff had hired Leonard Flamm to present his appeal to Circuit Court. In December of 2001, Frank Scardilli, a lawyer on the staff of the Circuit Court, met with an attorney from Flamm's office, ostensibly to mediate, and reportedly said Plaintiff was a bum and a bully. Plaintiff had never met the man. After this conference, Flamm (suspecting the court was poisoned against Plaintiff) sought to withdraw and Judge Buchwald allowed him to without hearing any input from the Plaintiff.

5-US 2d, 98civ3300, Aug 21,2001, page 19, "In the

Court's estimation, a very attractive package in light of his case's strength. "The Court is judging the case's strength before all the evidence is presented.

(If sufficient evidence had been presented for the Court to make such a conclusion then too much evidence had been presented to honor Defendant's request for a mistrial. On the second day of the trial, Defendant reported that the spouse of the lead attorney of a three lawyer team had died and rather than suspend the trial the court declared a mistrial that resulted in a difficult rescheduling problem.)

If Plaintiff won at trial, back pay would have been almost four years and court expenses paid by Defendant. If expenses and already paid tuition are deducted, the settlement amount to just one year's salary.

The court's statement that the package was attractive was intended to influence the appeal. It was an invalid conclusion supposedly based upon the strength of the case before the strength could be rightly determined.

6-also pg 19,id, "Mr Manning has no legal right to tuition remission for his stepdaughter..." The court is rendering a decision on an issue at bar before the trial has been completed--a decision that rightfully belongs to the jury.

NYU Personnel Manual was to be introduce that states a family member of a ten year employee may complete any started degree with tuition remission unless he is terminated. The jury would have to decide if the termination was retaliation.

The court's assessment was wrong and premature.

7- The court caused Plaintiff's lawyers to expose his position for settling while Defendant's position was still secret. This is somewhat discernible from Defendant's attorney's testimony.

Declaration of Defendant's attorney, Lichtenberg, US 2dist 98cvi3300, June 11, 2001. Ms Lichtenberg testifies that when the court was seeking to determine if negotiations were feasible "... the court asked Mr Manning to state, in open court, his position regarding settlement. Mr Manning stated that, among other things, (i) he believed his case was worth a great deal of money, (ii) he. ..." This testimony is not believable because if Plaintiff said what is stated it would indicate that the parties were too far apart for negotiations. Negotiations did take place.

Also, if Plaintiff testified as Defendant states he did it would have been too vague to be helpful. The court would not accept such a useless answer.

Further, such a question is always asked the attorney never the Plaintiff

The argument, here, is that even the attorney should not have been asked to expose Plaintiff's position while Defendant's position was still unrevealed. If inadvertently asked, the answer should have precluded negotiations. Plaintiff was at a disadvantage negotiating.

What defendant testified is not true. The only possible reason for the defendant's attorney to lie in this manner was to cover up the court's improper action. Other than supporting the court, such a lie serve no purpose.

A judge other than Judge Buchwald was originally assigned to the case. Plaintiff feels the unexplained change in presiding judges had a major impact. The judge's decision to exclude important evidence, handed down only four days before the trial, caused havoc with Plaintiff's lawyers. The court was preventing relevant evidence from going to the jury.

CONCLUSIONS

The ruling of the Appeals Court that allows the in-court agreement to be expanded by the District Court to include prohibitions against legal action not confined to the instant case and against Plaintiff seeking employment at NYU is not proper because:

I-it conflicts with prior rulings of the District and Circuit Courts,

2-Plaintiff did not agree to a "general release"

3-the Court of Appeals only considered testimony of the District Court despite there being evidence that the court was not neutral and some of the testimony given by the court does not fit with other testimony

4-Plaintiff was denied his right to legal processes.

The justices were grasping at straws trying to make a wrong decision right. In doing so, they issued a ruling that dramatically increases the Court's power. The power to alter and expand written agreements.

Therefore, I pray that the Court will review the decision of the Appellate Court and, if it so deems, take appropriate action to remedy the matter.

Further, it is requested that the Court declare that Plaintiff's appeal was justified. Defendant withheld the settlement money while Plaintiff's appeal was pending and did not place it in escrow where interest would have accrued. Plaintiff is seeking interest for the period of time payment was delayed.

Plaintiff apologizes and means no disrespect by coming before the court *pro se*. This appeal is as much about justice as it is about money and few lawyers want to

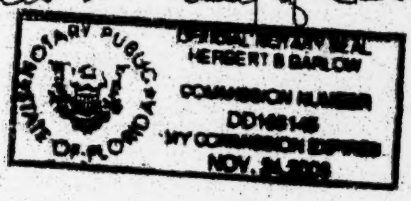
dispute a federal judge, especially where the rewards are meager and unsure

Truthfully rendered.

George Manning

George Manning, Pro Se
8153 SE Cumberland Circle
Hobe Sound, Fl 33455
772 545 0824

Sworn to and subscribed before me
this 20th day of January 2003



Herbert B Barlow
Notary Public